

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations
(Pearsall and Dilley, Texas)

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MB Docket No. 03-87
RM-10686

To: Assistant Chief, Audio Division

REPLY COMMENTS

Pearsall RadioWorks, Ltd. ("PRW"), licensee of Station KVWG-FM, Channel 237A, Pearsall, Texas, hereby replies to the Comments and Counterproposal (the "Counterproposal") filed in this proceeding by Batesville Broadcasting Company ("BBC") in response to the *Notice of Proposed Rule Making* ("NPRM"), DA-1013 (released April 4, 2003).

PRW initiated this proceeding through its November 19, 2002 Petition for Rule Making seeking the reallocation of KVWG-FM's current channel, 237A, from Pearsall to Dilley, Texas, and a modification of KVWG-FM's license accordingly; and the allotment of Channel 227A to Pearsall as a "backfill" replacement for Channel 237A. The Counterproposal suggests, *inter alia*, that Channel 228C3, an allotment incompatible with the Channel 227A proposal for Pearsall, be added at Batesville, Texas. The Counterproposal should be rejected.

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BBC Proposes a Comparatively Inefficient Use of Spectrum

The proposed Channel 228C3 allotment at Batesville will be the community's second service, not its first as BBC states.¹ The *Notice of Proposed Rule Making*, DA-01-1482 in MM Docket No. 01-130, 16 FCC Rcd 12682, 12683 (2001) (the "*Batesville Notice*"), referred to by BBC as possibly adding Channel 250A to Batesville, was released June 22, 2001. However, that proceeding is now ripe for a favorable decision as a result of the Commission's action, on May 8, 2003 in MM Docket No. 00-148, dismissing the counterproposal in that proceeding. That counterproposal, which involved 22 communities in Texas and Oklahoma, was the only impediment to the proposed Channel 250A allocation at Batesville in MM Docket No. 01-130. See *Quannah, et al, Texas, and Ardmore, et al, Oklahoma*, DA 03-1533, MM Docket No. 00-148 (released May 8, 2003).

As BBC itself admits, Batesville has a population of only 1,298 persons.² Rather than the "city" BBC claims it is, Batesville is an unincorporated Census Designated Place.³ Thus, by the time the Commission resolves the instant proceeding, it will be adding a *second* service to an unincorporated community of only 1,298 persons, yielding an anemic station-per-person ratio of 1 to **649**. In contrast, PRW's proposal to add Channel 237A to Dilley would provide a second full-time service to Dilley, an incorporated city with a population of 3,674, and would yield a station-per-person ratio of

¹ See Counterproposal at 2.

² *Id.*

³ *Batesville Notice*, note 2.

1 to 1,837. At Pearsall, the station-to-population ratio would be 1 to 2,385 even counting the proposed station on Channel 227A. This is a superior allocation scheme. Batesville simply is too small and insignificant to warrant two FM allotments when far better use can be made of the spectrum in the larger, incorporated communities of Pearsall and Dilley.

Moving KVWG-FM to Dilley, Texas Will Serve the Public Interest

BBC argues that its Batesville proposal will serve the public interest better than PRW's proposals for Dilley and Pearsall. BBC overlooks the fact, recognized in the *NPRM* at paragraph 2, that KVWG-FM would *immediately* provide Dilley, population 3,674, with a *second* local service and a first competitive service to Dilley's only radio station, KLMO-FM. The other Dilley FM assignment, Channel 264A, is awaiting auction⁴ and may not, if ever, materialize into a radio station. PRW's ability to immediately provide a second service to Dilley trumps BBC's plan to offer a second service to Batesville, a community with only 1,298 persons, in the distant future. Add to this the fact that Channel 227A at KVWG-FM's present site at Pearsall, when compared to the existing KVWG-FM, would increase the 60 dBu Pearsall coverage area from 167 square kilometers⁵ to 2,500 square kilometers, and the 60 dBu population coverage from 8,273 to 16,109 persons –a 95 percent improvement.⁶ Denying Dilley a second service, and Pearsall a station that would permit a doubling of population coverage, merely for the

⁴ See *NPRM*, note 2.

⁵ KVWG-FM operates with at 50 meters AAT with 100 Watts ERP under Section 73.215 of the rules due to a short spacing.

⁶ See PRW's Petition for Rule Making, page 2 and Allocation Statement, pages 1-2.

sake of adding a second channel to an unincorporated place of 1,298 persons, would not serve the public interest. On the other hand, for the reasons stated, the proposed assignments at Pearsall and Dilley will do just that.

The KVWG-FM Dilley Reallocation Will Not Leave Anyone Without Service

Contrary to BBC's contention (Counterproposal, page 2 and note 7), PWB's proposal is not the type of backfill proposal which the Commission condemned in *Pacific Broadcasting of Missouri*, 18 FCC Red 2291, 2295-96 (2003). That prohibition extends only to community-of-license changes where the backfill is relied upon to preserve the community's sole transmission service. Here, unlike the situation described in *Pacific*, Pearsall has two remaining and currently licensed local stations--KVWG(AM) and KMFR(FM). Thus, Pearsall will remain well served up the time the new station on Channel 227A goes on the air. As indicated in PRW's comments filed May 22, 2003, PRW intends to file an application for the new Pearsall facility and, if successful, will construct and operate the new station there as well as KVWG-FM at Dilley.

Nor will the removal of Channel 237A from Pearsall to Dilley significantly affect listeners in surrounding areas. The attached engineering statement of John Furr shows that, due to the proximity of the communities, the loss area resulting from the move to Dilley will be only 8.6 square kilometers with a population of 262 persons. However, as also shown, the loss area is well served by five (5) or more full-time stations. While not specifically stated in the engineering report, the gain area (2,358 square kilometers containing 10,387 persons) is similarly well served due to the proximity of Dilley to Pearsall.

Summary and Conclusion

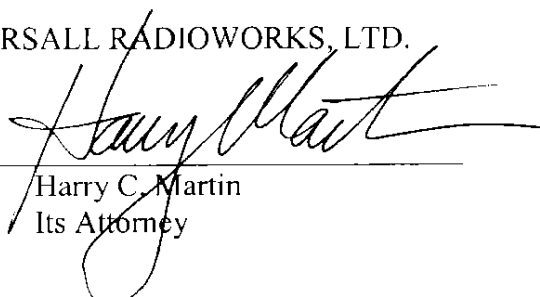
The allocations to Dilley and Pearsall proposed in the *NPRM* will better serve the public interest than BBC's plan to add a second service to tiny, unincorporated Batesville. If PRW's proposal is adopted, Dilley would immediately be provided with a second local service and a first competitive service. In Channel 227A, Pearsall will have a full Class A facility instead of the short-spaced and otherwise handicapped Channel 237A facility now struggling to serve the community with 100 Watts at 50 meters. There is not, as BBC argues, a "backfill" problem with this proposal because Pearsall will continue to be served by two local stations. Nor is there any impact in terms of gain and loss areas and populations. In short, PRW's proposal presents a preferential allotment scheme when compared to adding a second assignment to Batesville.

WHEREFORE, It is respectfully requested that the Commission deny the Counterproposal and instead adopt the proposals in the *NPRM* to reallocate Channel 237A to Dilley, Texas, and modify KVWG-FM's license accordingly; and to allot Channel 227A to Pearsall as a replacement for Channel 237A.

Respectfully submitted,

PEARSALL RADIOWORKS, LTD.

By



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Its Attorney

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June 10, 2003

307-B Study
Pearsall Radio Works, Ltd.
Dilley, Texas

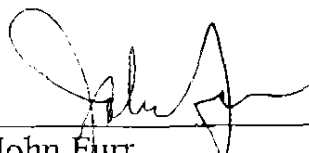
The move of KVWG to Dilley, Texas will create a loss of 8.6 square kilometers and 262 persons. The proposed station will not serve this area. The new proposed operation will serve 19,195 persons in 2,516 square kilometers. This is a net gain of 2,358 square kilometers and 10,387 persons.

The following stations serve as shown on the attached Exhibit A all of the lost area:

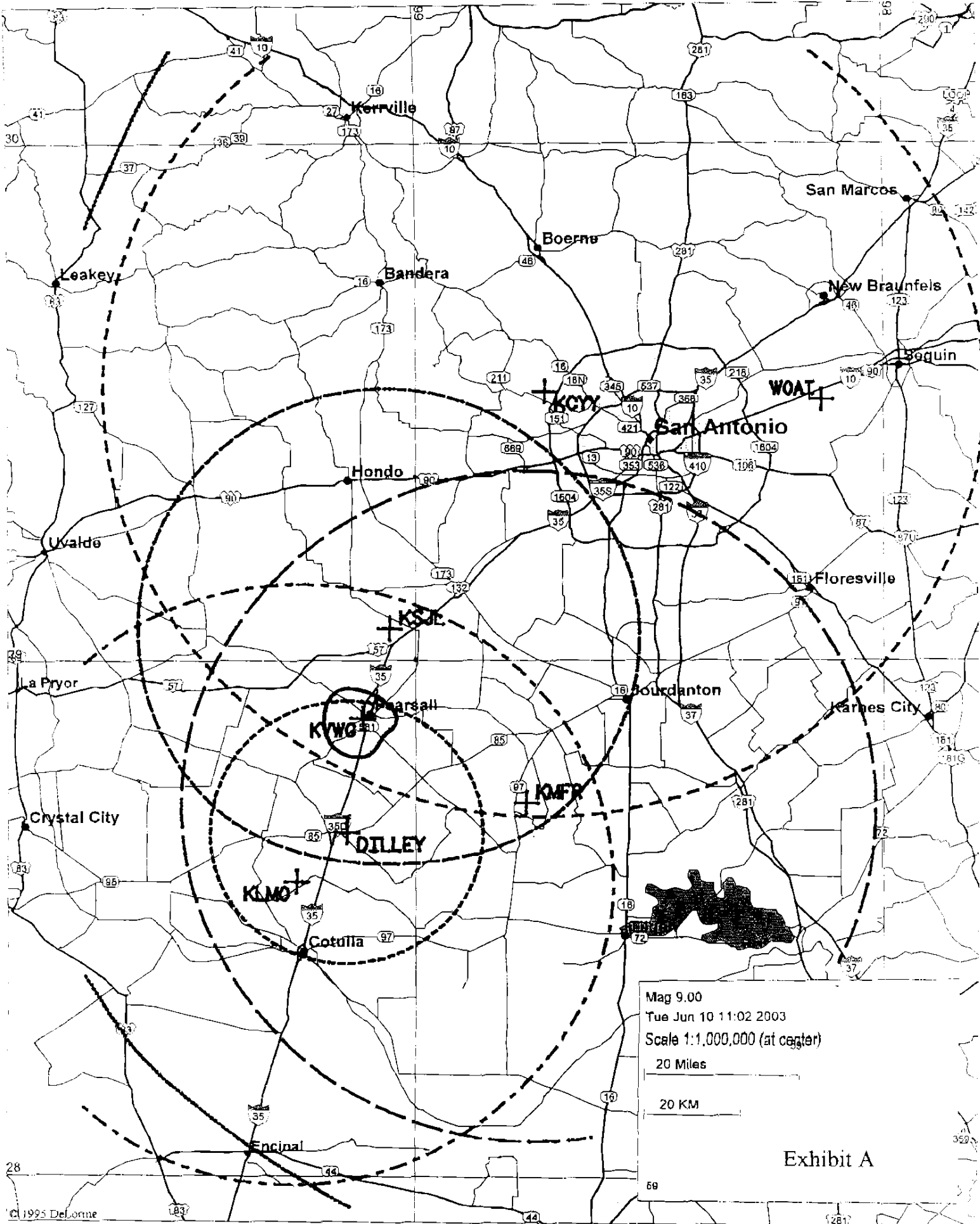
KMFR(FM), Pearsall, Texas
KLMO-FM, Dilley, Texas
KCYY(FM), San Antonio, Texas
KSJL-FM, Devine, Texas
WOAI(AM), San Antonio, Texas

The above information is true and correct to my knowledge and belief.

June 10, 2003



John Furr
Technical Consultant

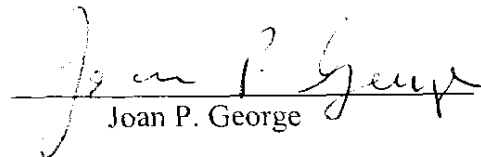


CERTIFICATE OF SERVICE

I, Joan P. George, a secretary in the law firm of Fletcher, Heald & Hildreth, do hereby certify that a true copy of the *Reply Comments* was sent this 10th day of June 2003, via hand delivery where indicated and by U.S. First Class Mail, postage prepaid, to the following:

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Federal Communications Commission
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Joan P. George

* By hand